

**James Madison to James Monroe, February 23,
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TO JAMES MONROE. MAD. MSS.

Montpr., Feby. 23, 1820

Dr. Sir, —I recd. yours of the 19th on Monday. Genl. Brown who returned from Monticello that evening has been since with me till 10 O'C today. Your letter found me indisposed from exposure to a cold wind, without due precaution, And I have continued so. I write now with a fever on me. This circumstance will account for both the delay & the brevity in complying with your request.

The pinch of the difficulty in the case stated seems to be in the words “forever,” coupled with the interdict relating to the Territory N. of L 36° 30#.1 If the necessary import of these words be that they are to operate as a condition on future States admitted into the Union, and as a restriction on them after admission, they seem to encounter indirectly the argts. which prevailed in the Senate for an unconditional admission of Missouri. I must conclude therefore from the assent of the Senate to the words, after the strong vote on constitutional grounds agst. the restriction on Missouri, that there is some other mode of explaining them in their actual application.

1 The Missouri Act was approved March 6, 1820. Section 8 read: “That in all that territory ceded by France to the United States, under the name of Louisiana, which lies north of thirty-six degrees and thirty minutes north latitude, not included within the limits of

Library of Congress

the State contemplated by this act, slavery and involuntary servitude, otherwise than in punishment of crimes . . . shall be and is hereby forever prohibited.”— 3 *Stat.*, 548.

As to the right of Congs. to apply such a restriction during the Territorial Periods, it depends on the clause in the Constitution specially providing for the management of these subordinate establishments.

On one side it naturally occurs that the right being given from the necessity of the case, and in suspension of the great principle of self Govt. ought not to be extended farther nor continued longer than the occasion might fairly require.

On the other side it cannot be denied that the Constl. phrase, “to make all rules” &c as expounded by uniform practice, is somewhat of a ductile nature, and leaves much to Legislative discretion.

The questions to be decided seem to be whether a *territorial* restriction be an assumption of illegitimate power, or 2 a measure of legitimate power. And if the latter only whether the injury threatened to the nation from an acquiescence

in the measure, or from a frustration of it, under all the circumstances of the case, be the greater. On the first point there is certainly room for difference of Opinion, tho' for myself I must own that I have always leaned to the belief that the restriction was not within the true scope of the Constitution. On the alternative presented by the second point there can be no room, with the cool and candid, for blame on those acquiescing in a conciliatory course, the demand for which was deemed urgent, and the course itself deemed not irreconcilable with the Constitution.

This is the hasty view of the subject I have taken. I am aware that it may be suspected of being influenced by the habit of a guarded construction of Constl. powers; and I have certainly felt all the influence that cd. justly flow from a conviction, that an uncontroled dispersion of the slaves now in the U. S. was not only best for the nation, but most

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favorable for the slaves, also both as to their prospects of emancipation, and as to their condition in the mean time.

The inflammatory conduct of Mr. King surprises every one. His general warfare agst. the slaveholding States, and his efforts to disparage the securities derived from the Constn. were least of all to be looked for. I have noticed less of recurrence to the contemporary expositions of the Charter than was to be expected from the zeal & industry of the Champions in Debate. The proceedings of the Va. Convention have been well sifted; but those of other States ought not to have been Overlooked. The speeches of Mr. King in Massts. and Mr. Hamilton in N. York shew the ground on which they vindicated particularly the Compound rule of representation in Congs.. And doubtless there are many other evidences of the way of thinking then prevalent on that & other articles equally the result of a sense of *equity* & a spirit of mutual concession.